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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Fourth periodic reports of States parties due in 1994

Addendum

FINLAND 1/ 2/

[10 August 1995]

1/ For the second periodic report submitted by the Government of Finland, see CCPR/C/32/Add.7; for its consideration by the Committee, see CCPR/C/SR.643 to SR.646 and Official Records of the General Assembly, Forty-first session, Supplement No. 40, (A/41/40), paras. 164-260. Pursuant to the Committee's consideration of Finland's second periodic report, supplementary information was submitted by Finland (CCPR/C/32/Add.11). For the third periodic report of Finland, see CCPR/C/58/Add.5; for its consideration by the Committee, see CCPR/C/SR.1014 to SR.1016 and Official Records of the General Assembly, Forty-sixth session, Supplement No. 40, (A/46/40), paras. 102-141.

2/ The information submitted by Finland in accordance with the guidelines concerning the initial part of reports of States parties is contained in the core document (HRI/CORE/1/Add.59).

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General comments

1. In this fourth periodic report by Finland to the Human Rights Committee on the implementation of the International Covenant on Civil and Political Rights reference is made to the previous periodic reports on a number of points. The previous reports are:

CCPR/C/1/Add.10 - Initial report (1977)

CCPR/C/1/Add.32 - Supplementary report to the initial report (1978)

CCPR/C/32/Add.7 - Second periodic report (1985)

CCPR/C/32/Add.11 - Additional report to the second periodic report (1986)

CCPR/C/58/Add.5 - Third periodic report (1989).

2. The European Convention for the Protection of Human Rights and Fundamental Freedoms entered into force for Finland in May 1990. When acceding to the Convention Finland introduced a number of legislative measures required by the Convention.

3. In December 1993, the Government Bill (309/1993 vp) on amending fundamental rights provisions of the Constitution was given to Parliament. The Bill has been approved by Parliament (969/1995) and entered into force on 1 August 1995.

4. This general reform of the fundamental rights provisions has modernized and defined Finland's system of fundamental rights more precisely as well as extended the scope of its application to new groups and brought a number of new fundamental rights within the scope of protection provided by the Constitution. One of the most important purposes of the fundamental rights reform is to extend and strengthen the rights of the individual and the protection of the individual at constitutional level. The protection of fundamental rights is developed by extending and specifying the rights to liberty guaranteed by the Constitution in accordance with the path laid down in international agreements on human rights, and by including in the Constitution provisions concerning the principal economic, social, cultural and environmental rights including the guarantee of legal protection with regard to administration and the exercise of law.

5. The reform aims at increasing the direct applicability of fundamental rights in courts of law and by other public authorities, at tightening the conditions under which fundamental rights may be restricted and at clarifying the system of supervising fundamental rights by including basic provisions relating to them in the Constitution. This periodic report focuses on the amendments of the provisions on fundamental rights in the Constitution Act.

6. A comprehensive reform of the penal legislation is under way in Finland. The Government Bill for the Penal Code and a number of other Acts of Parliament constituting the second phase of the reform (HE 94/93) has been adopted by Parliament, and it is expected that the amendments will enter into force on 1 January 1996.

Article 1

7. The special status of the Åland Islands has been discussed in earlier reports. Self-government was granted to the people of the Åland Islands after the sovereignty dispute was settled by the League of Nations, so that the people could preserve the Swedish language, culture and local traditions.

8. The Autonomy Act of Åland (650/51, amend. 1144/91), which can be compared to the Finnish Constitutional Law as regards its enactment order, and every change to which requires the consent of the Åland Legislative Assembly, contains the legal basis for exercising the self-government. Originally the legislative power was divided so that the most important matters for the State, like foreign policy and defence, were reserved for the Finnish Parliament, and all remaining matters were submitted to the Åland Legislative Assembly. After the law was amended in 1951, this division in legislative powers was specified. As a guarantee of preserving the Swedish language and cultural identity of the people living in the Province of Åland, a sort of regional citizenship called hembygdsrätt, was established. All inhabitants who have resided continuously in the Province of Åland for a period of more than five years are entitled to hembygdsrätt.

9. In the new Autonomy Act 1991 the autonomy was enlarged, mainly by updating the division of legislative power. The most radical change concerned economic relations: the Province of Åland gained a free budgetary power.

10. As regards the ratification of international treaties, according to the new Autonomy Act, the President of Finland submits implementing Acts and Decrees to the Åland Legislative Assembly. Previously only introductory acts were submitted to the Åland Legislative Assembly, sometimes leaving Åland outside the scope of the treaty concerned. The International Covenant on Civil and Political Rights has not been submitted to the Parliament of Åland owing to the former procedure.

11. The position of the Sámi people is discussed under article 27.

Article 2

12. The new Aliens Act (378/91) took effect on 1 March 1991. Article 1 stipulates that in applying the Act the rights of aliens shall not be curtailed more than is necessary.

13. The Non-military Service Act (1723/91), which came into force in 1992, states in article 18 that non-military service shall not be organized in such a manner as to discriminate on the basis of race, origin, language, religion, and political or other views or for comparable reasons.

14. The Agreement on the European Economic Space, which entered into force at the beginning of 1994, and Finland's membership in the European Union, effective from 1 January 1995, both mean that in the fields referred to in the Agreement, citizens of the member States of the European Economic Space and of the European Union shall not be treated differently from Finnish citizens.

15. As a rule, the amendment of the fundamental rights provisions of the Constitution (969/1995) extends the application of fundamental rights to all persons within Finland's jurisdiction; only the right to vote in parliamentary elections and the right to cross the State border will depend on citizenship.

16. A general prohibition against discrimination has been included in article 5 (2) in the Constitution Act, which reads as follows*:

> "No one shall without acceptable reason be placed in an unequal position on the basis of sex, age, origin, language, religion, conviction, opinion, health, disability or for other reason related to his or her person."

17. The amendment of the fundamental rights provisions of the Constitution Act is closely connected with the international human rights treaties binding on Finland. Its purpose is to bring the substance of the Finnish regime of fundamental rights closer to the international human rights obligations. Therefore, it is proposed in a number of instances that fundamental rights be extended to all persons within Finland's jurisdiction and aimed more accurately in the direction pointed by the human rights treaties.

18. More generally, the amendment aims at strengthening the respect for human rights in the Finnish legal system. Consequently, the provisions on the obligation to guarantee fundamental rights and to monitor their implementation have been extended to apply also to international human rights. According to article 16a (1) of the Constitution Act all branches of government shall secure the implementation of both fundamental rights and human rights. The duties of the Chancellor of Justice and the Parliamentary Ombudsman to monitor the implementation of human rights are contained in articles 46 and 49 of the Constitution Act. The duty of the Constitutional Committee of Parliament to examine the compliance with international human rights treaties of government bills and other matters is prescribed by article 46 of the Parliament Act.

19. It is proposed that the penalization of discrimination in the Penal Code be extended (Penal Code, chap. 47, art. 3, as amended) and that a provision concerning discrimination relating to work be included in the Penal Code. It is also proposed that the content of discrimination be defined more clearly (Government Bill for the comprehensive reform of the Penal Code 94/93). The proposed amendments extend discrimination punishable by law to industrial and commercial activities, exercise of a profession, service of customers, official functions, other public activities and to public meetings and other public events. Discrimination consists of not serving a person without an acceptable reason and on generally applicable terms, of refusing a person entry to a meeting or an event or removing him or her or placing a person in a manifestly unequal position or a position essentially inferior to that of others on the basis of race, national or ethnic origin, colour, language, sex, age, marital status, sexual orientation, health, religion, opinion, political or professional activity or for a similar reason.

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* The translation of the provisions of the Constitution Act are unofficial.

20. Discrimination related to work covers cases where employers either when announcing a vacancy, choosing an employee or, during an employment relationship, without weighty and acceptable reasons place an applicant or an employee in an unfavourable position on any grounds listed in the Penal Code. The provision would also apply to the State and municipalities as employers.

Article 3

21. A provision (5 (3)) prohibiting sexual discrimination has been added to the Constitution Act in connection with the amendment (969/1995), stating that equality between the sexes shall be promoted in all societal activities and in working life, especially as regards the determination of remuneration and other conditions of employment, as prescribed and specified by an Act of Parliament.

22. The Act on Equality between Women and Men, which entered into force at the beginning of 1987, is described under article 3 of the report on the implementation of the International Covenant on Economic, Social and Cultural Rights.

Article 4

23. The provision of the Constitution Act restricting the exercise of fundamental rights in time of war and rebellion has been amended (969/1995) and reads as follows:

> "Such temporary derogations from fundamental rights may be described by an Act of Parliament as are necessary during an armed attack against Finland and in a public emergency which threatens the life of the nation and is, according to an Act of Parliament, comparable in gravity to an armed attack; temporary derogations from fundamental rights which are necessary and in compliance with Finland's international human rights obligations may be prescribed by an Act of Parliament."

This means that, as revised, article 16a (2) of the Constitution Act on public emergency specifically requires that any derogation from the fundamental rights permitted under this article be in line with Finland's international human rights obligations. Consequently, restrictions on derogation from human rights in time of public emergency permitted by international human rights treaties will become part of the requirements for derogation from fundamental rights laid down in article 16a.

24. In the period covered by the report, a new State of Defence Act (1083/91) was adopted which replaces the 1930 Act concerning the state of war; a Readiness Act (1080/91) has also been adopted. According to the new State of Defence Act, in order to safeguard the independence and legal system of the State, State defence and security may be strengthened by introducing a state of defence in time of war and rebellion. As compared to the previous legislation, this Act decreases considerably the possibilities of restricting the rights of an individual and defines the conditions for restriction more specifically. The Act applies to general security measures to support the defence of the State as well as to the safeguarding of military and economic national defence. The State of Defence Act is implemented by decree and may

be extended by decree. A decree to introduce a state of defence may be given for a maximum period of three months. It may be extended by decree for a maximum period of one year at a time. The decree may be revoked by Parliament. Article 2 (2) of the Act requires that:

> "States parties to the International Covenant on Civil and Political Rights shall be informed of the enforcement and termination of the state of defence through the intermediary of the Secretary-General of the United Nations as stipulated in article 4 (3) of the Covenant."

25. Under the terms of the Act the rights of an individual guaranteed by the Constitution Act and other rights shall not be restricted more than is necessary to achieve the purposes of the Act; without an acceptable reason no distinction shall be made, in applying the Act, between persons on the basis of race, colour, birth, sex, language, nationality, religion, age, or a political or other opinion or for a similar reason. In applying the Act, those restrictions on the scope of application of Finnish law must be observed which derive from international treaties binding on Finland and from generally recognized rules of international law. The Act does not permit derogation from the rights enumerated in article 4 (2) of the International Covenant on Civil and Political Rights.

26. The purpose of the Preparedness Act is to secure the maintenance of the population and the national economy, to maintain the legal system and fundamental rights of citizens and to safeguard the territorial integrity of the State in time of emergency. In the Act, public emergency refers to an armed attack against Finland and a threat of war, but the term also covers some less alarming crises such as disasters and a number of serious external threats to the maintenance of the population and the national economy. However, more extensive special powers shall be given to the Council of State only in time of armed attack or war. The Act prohibits discrimination and the restriction of certain rights of an individual in the exercise of special powers by the Council of State. In applying the Act, those restrictions on the scope of application of Finnish law must be observed which derive from international treaties binding on Finland and from recognized rules of international law. The powers covered by the Act refer, for example, to the use of labour; the Act replaced an earlier Act from 1942 concerning the obligation to work.

Article 6

27. Reference is made to the third periodic report (CCPR/C/58/Add.5).

28. On 4 April 1991 Finland ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, and the Protocol entered into force for Finland on 11 July 1991.

29. The amendment of the provisions on fundamental rights (969/1995) adds a provision to the Constitution Act (art. 6) on the right to life and another provision prohibiting the death penalty, torture and degrading treatment.

Article 7

30. Reference is made to the third periodic report (CCPR/58/Add.5).

31. The reform of the provisions on fundamental rights (969/1995) adds a prohibition against torture and other degrading treatment to the Constitution Act (art. 6).

32. A number of decisions to expel an alien have been quashed by the Supreme Administrative Court on the grounds that an alien faced a risk of inhuman treatment. The decisions by the Court made reference, inter alia, to article 7 of the Covenant. See also article 13.

Article 8

33. Provisions in the Penal Code on slavery and the slave trade are subject to review. The new provisions are part of the second phase of the comprehensive reform of the Penal Code on which a government bill was submitted to Parliament in the summer of 1993 (HE 94/93 vp). As does the current legislation, the new provision on abduction (Penal Code, chap. 25, art. 3) applies to the seizure of a person by force, threat or deception for a specified purpose. It is proposed that the purposes specified in the Code be changed to consist of the following: placing a person in a degrading situation or in forced labour or trafficking in persons under the age of 15. It is also proposed that abduction continue to refer to acts constituting the slave trade, which Finland is bound to punish by international treaties.

Article 9

34. The former article 6 of the Constitution Act has been replaced by a more detailed provision (969/1995), which reads as follows:

> "Every person shall have the right to life and personal liberty, physical integrity and the security of person.
>
> "No one shall be sentenced to death, tortured, or treated in any other manner which violates human dignity.
>
> "No one shall be subjected to interference with his or her personal integrity or to deprivation of liberty arbitrarily or without grounds prescribed by an Act of Parliament. A penalty entailing deprivation of liberty shall be imposed by a court of law. The lawfulness of any other form of deprivation of liberty may be submitted to judicial review. The rights of persons deprived of their liberty shall be secured by an Act of Parliament."

35. Following the previous report, the Coercive Criminal Investigation Means Act (450/87) has undergone considerable changes. An amendment to chapter 1 of the Act entered into force on 1 May 1990. The amendment enabled Finland to withdraw a reservation to article 9 (3) of the Covenant (amendment 664/90 to the Implementation Decree, which entered into force on 1 August 1990). According to chapter 1, article 13, of the Act, a request for remand for trial concerning an arrested person must be submitted to the court without delay and

no later than the third day from the date of apprehension. Chapter 14 states that a request for remand must be considered by the court without delay and no later than four days from the date of apprehension. The deadline of four days shall not be exceeded because of weekend, for example. Chapter 1, article 21, of the Act requires that the date of hearing the charges against a remand prisoner not be set later than is necessary for pre-trial investigation and preparation of charges and in any case no later than four weeks from the date of remand. According to article 22 a remand prisoner who has been held continuously for two weeks after a decision has been taken on the question of remand has the right to have the decision reviewed.

36. Amendments to the Military Disciplinary Procedure Act (374/90) entered into force on 1 May 1990. The Act now permits appeal to a general court against a disciplinary punishment ordered by an officer responsible for discipline. The Act was further amended by an Act which took effect on 1 June 1991 (652/91) and which restricted to eight days the maximum length of a military confinement order given in disciplinary proceedings.

37. The Non-military Service Act (1723/91), which entered into force in 1992, improved the right of appeal for conscientious objectors. The right of appeal was further enhanced by amendments which came into force on 1 January 1994 (1271/93). A conscientious objector now has the right of appeal against decisions relating to his conditions of service, such as disciplinary punishment, to a court instead of an administrative authority. The right of appeal to the Provincial Court has been used in very few cases, and they concerned mostly postponement of service.

38. Amendments to the Enforcement of Sentences Decree (349/90) entered into force on 1 May 1990. Decision on the loss of conditional liberty as a result of misconduct used to fall within the competence of the Ministry of Justice, but after the amendments were introduced that decision is now taken by a general court of first instance (art. 14a). For a special reason, an official authorized to arrest may, however, take a person into custody before the case is heard by a general court of first instance. The amendments replaced article 10a (5) of the Decree, according to which a prisoner who had been ordered by the prison director to undergo punishment by solitary confinement had to complete the punishment if he had not done so by the time the sentence ended.

39. An amendment to the Mental Health Act (1116/90), which introduced provisions on involuntary in-patient psychiatric care, entered into force at the beginning of 1991 (chap. 2). Article 9 states that a person may be admitted for observation for five days in order to determine whether there are grounds for involuntary treatment. Article 24 provides for appeal to the Provincial Court against decisions by a doctor in the hospital on admitting a person for treatment or continuing treatment against the person's will. Article 26 requires such cases to be considered as a matter of urgency. In accordance with article 11, decisions relating to the committal of minors must always be submitted for confirmation by the Provincial Court. A patient may be confined for involuntary treatment for a maximum of three months, and it may be extended by a renewable period of six months. Article 27 contains provisions on the right of persons committed for treatment to counsel and free legal aid.

40. The provisions governing the taking into custody of aliens are contained in chapter 7 of the Aliens Act (378/91). The Act states that taking into custody is a secondary measure in comparison with the obligation to report and to other means of control. Article 46 (2) prescribes that persons under 18 shall not be taken into custody without hearing a social welfare authority or the Ombudsman for Aliens.

41. An alien may be taken into custody in cases where an investigation is under way to determine whether he or she meets the requirements for entry and in cases where a decision to deport or refuse entry has been made or is under consideration. There, are however, other criteria that must be met before the measure is taken: with regard to the alien's personal and other circumstances, there must be a justified reason to assume that he or she will hide or commit criminal offences in Finland, or the alien's identity has yet to be established. In addition, one condition is that the obligation to report and other means of control are not deemed adequate. An alien may be held in custody only long enough to determine whether his or her entry can be permitted or until he or she has been refused entry, deported or the case has been resolved in some other manner.

42. The decision on taking an alien into custody is made by the police officer who is responsible for the case (art. 47). Article 48 requires that the lower court for the district where the alien is held or, in urgent cases, any other lower court, as specified by the Ministry of Justice, be informed about the measure without delay and in any case no later than the following day. The court must hear the case without delay and no later than four days from the date on which the alien was taken into custody. The court must proceed in the manner prescribed by the provisions concerning requests to remand a person for trial. If no grounds exist for holding the person in custody, the court must order his or her immediate release.

43. According to article 50, a police officer who has ordered that an alien be placed in detention must order his immediate release when there are no longer grounds for detention. If an alien held in custody has not been ordered released, the lower court for the district of the place of custody must, under the terms of article 51, reconsider the matter on its own initiative no later than two weeks from the date on which the court ordered that the alien continue to be held in custody.

44. Under article 52, persons held in custody must be provided an opportunity to communicate with their immediate family, representative of their country of origin, legal counsel, the Ombudsman for Aliens and the person who was to receive them in Finland.

45. The cases of Vuolanne (265/1987) and Torres (291/1988) resolved by the Human Rights Committee led to legislative changes in Finland. Decision KHO 1993 A 25 by the Supreme Administrative Court confirmed that a person whose complaint had been accepted by the Human Rights Committee was entitled to compensation. On 2 April 1990 the Committee found that Finland had been in breach of the Covenant in that particular case because an alien taken into custody in Finland did not have the right to judicial review of the legitimacy of the instances of deprivation of liberty under the Aliens Act. Therefore, Finland was required to compensate the alien for the violation.

The Supreme Administrative Court held that as a result of a contravention of the treaty Finland was under an obligation to compensate for the violation and confirmed that the State was to pay Fmk 20,000 and the petitioner's legal expenses.

Article 10

46. Finland's prison population has continued to decrease since the third periodic report (1989). On 1 January 1994, the number of prisoners totalled 3,302, which means approximately 65 prisoners per 100,000 inhabitants. The figure has remained about the same over the past four years.

47. An amendment to the Conditional Sentences Act (992/89) to restrict the sentencing of persons under 18 to an unconditional sentence of imprisonment entered into force at the beginning of 1990. In early 1994 there were only ten prisoners under the age of 18.

48. Experiments with community service have been conducted in parts of Finland since early 1991. In 1994 the experiments were expanded to cover the entire country. Legislation specifically provides for community service instead of a conditional sentence of imprisonment. In most cases this is what has also happened in practice: a study shows that at least 90 per cent of those sentenced to community service would have received a conditional sentence of imprisonment in earlier legal practice.

49. In discussing Finland's previous periodic report, several members of the Committee drew attention to the possibility of holding dangerous recidivists in preventive detention. Pursuant to the Dangerous Recidivists Act final decision on the measure is taken by an authority called the Prison Court. In many ways, its position resembles that of a court. Finland holds that it can be classified as a court in the meaning of article 9 (4) of the Covenant. Its members are appointed by the President. Two of its five members must have experience of working as a judge; one of them acts as chairperson of the Court. The members must take a judicial oath. When appearing before the Prison Court, the defendant has right to counsel, whose fees are paid from public funds, if necessary.

50. The Prison Court may not take a decision on preventive detention if the court which has ruled on the criminal case has not, at the request of a public prosecutor, made it possible in its ruling. This ruling may be appealed to a court of appeal, whereas the decision on preventive detention made by the Prison Court is not appealable.

51. Only those offenders may be held in preventive detention who have been sentenced for a serious act of violence more than once. In the beginning of 1994, there were 11 such offenders. It is important to understand the actual content of preventive detention. In the past two decades, preventive detention has in practice meant no more than the completion of the entire sentence. In other words, the offender is not released before he has completed the entire sentence. The offenders in preventive detention are not held in a special institution but in regular prisons. The enforcement of the sentences of offenders in preventive detention does not differ essentially

from that of regular sentences. Only the most dangerous offenders who have committed acts of violence in prison are isolated from the other prisoners against their will.

52. In the spring of 1994 the Ministry of Justice prepared a proposal to eliminate preventive detention. According to that proposal, indefinite imprisonment would no longer be possible even in principle. At the request of the Ministry a number of opinions have been submitted on the proposal, and it is envisaged that a government bill will be presented to Parliament in the autumn of 1995.

Article 12

53. Article 9 of the Aliens Act states that an alien who is entitled to reside in Finland under the terms of that Act possesses unrestricted rights of residence and freedom of movement in Finland, unless specific provisions or special regulations ordain otherwise.

54. The amended article 7 of the Constitution Act (969/1995) relating to freedom of movement reads as follows:

> "Finnish citizens and foreigners lawfully residing in Finland shall have the right to freedom of movement and to choose their place of residence.
>
> "Everyone shall have the right to leave the country. This right may be restricted by an Act of Parliament in order to ensure legal proceedings or the enforcement of a sentence or to secure the fulfilment of obligation to carry out national defence.
>
> "Finnish citizens shall not be prevented from entering the country, or expelled from the country, or extradited or transferred to another country against their will.
>
> "Provisions on the right of aliens to enter Finland and to reside in the country shall be given by an Act of Parliament. An alien shall not be expelled, extradited or returned to a country where he or she faces a risk of a death sentence, torture or any other form of treatment in violation of human dignity."

Article 13

55. Deportation is regulated by articles 40 to 43 of the Aliens Act (378/91). The grounds for deportation are specified in article 40. Article 41 requires that in a deportation case all the matters and circumstances which might have an effect on the case be taken into account as a whole. These include, but are not limited to, the length of residence in Finland, the relationship between parent and child, family ties and other bonds to Finland as well as, in cases where deportation takes place on the grounds of a criminal offence committed by the alien, the nature of the offence.

56. According to article 42, decisions on deportation are taken by the Ministry of the Interior on the recommendation of the police. The same provision states that an alien and the Ombudsman for Aliens must be given

an opportunity to be heard in every deportation case. A decision on the deportation of an alien may include a prohibition to enter Finland for a maximum of five years or for an indefinite period. In 1993 such prohibitions were issued in 182 cases where an alien was refused entry and in 243 deportation cases.

57. In 1993 decisions on deportation were made in the cases of 476 aliens. The majority were asylum seekers; another large group were members of the Iridiamant community, the so-called lifestyle indians. In all the cases the most common reason for deportation was unlawful residence in Finland. In less than 10 per cent of the cases, deportation was based on a criminal offence committed by an alien. In 1994 the number of deportation cases was slightly less (163 aliens).

58. An alien who believes that a decision by the Ministry of the Interior on deportation or prohibition to enter Finland is in violation of his or her rights has under article 58 the right of appeal to the Supreme Administrative Court. While it is pending, the appeal prevents the enforcement of a decision on deportation. In 1993, 441 cases concerning aliens, mainly decisions on deportation and prohibition to enter, were appealed to the Court; at 282 in 1994, the figure was slightly smaller. In 1993 appeal was successful in 58 cases, and 29 cases were returned to a lower court. The respective figures for 1994 were 39 and 48.

59. An alien may be denied entry and removed from the country by refusal of entry (käännyttäminen) (arts. 37 to 39 of the Act). Usually this procedure is used at the border when an alien does not fulfil the requirements for entry. In that case the decision is taken by a passport control officer. The person has the right of appeal to the Provincial Court but appeal does not prevent enforcement.

60. In cases where an alien has entered Finland on a visa, without a visa requirement (as a tourist) or has applied for asylum in Finland, a passport control officer may not take a decision on refusal of entry. The decision must always be taken by the Ministry of the Interior. The decision may be appealed to the Supreme Administrative Court. Again, appeal does not prevent enforcement, but the Court may rule that the decision must not be enforced before it becomes legally valid.

61. No decision on refusal of entry may be made in the case of an asylum seeker before a decision on his or her application for asylum has become legally valid.

62. In 1993, 1,165 aliens were refused entry by the Office for Aliens Affairs in the Ministry of the Interior, and 1,409 aliens were refused by passport control officers. These aliens represented 86 different nationalities. The most common reason for refusal of entry by passport control officers was that the persons did not have the required entry visa or passport. Most decisions on refusal of entry by the Office for Aliens Affairs concerned asylum seekers; 189 of these decisions were appealed to the Supreme Administrative Court. In 1994 the Office for Aliens Affairs took a decision to refuse entry in 430 cases, and passport control officers in 2,164 cases.

Article 14

63. Reference is made to previous reports:

(a) The supplementary report to the initial report of 1977 (CCPR/C/Add.32);

(b) The second periodic report (CCPR/C/32/Add.11), paras. 21-24;

(c) The third periodic report (CCPR/C/58/Add.5), paras. 81-85.

64. The provisions on criminal procedure are subject to reform. The proposed new Act governing criminal procedure will contain the key provisions on procedure as well as provisions on the right to prosecute, on the public defender and on the payment of legal expenses. At this stage the date for submitting a government bill to Parliament has not been set.

65. The revised legislation rests on the principle of oral hearing, which is immediate and centralized, as a way of conducting a speedy, reliable and inexpensive trial. In this way, courts can be secured the best possible means for an exhaustive hearing. It is envisaged that criminal proceedings follow the accusatory procedure; this will also facilitate defence.

66. International treaties and recommendations binding on Finland as well as decisions on the law of criminal procedure made by the European Court of Human Rights have received due attention in the review.

Proposals of major importance for the implementation of article 14

67. In cases where a criminal suspect is under 18 years of age, the public prosecutor must decide, as a matter of urgency, whether to bring charges and, if so, do it without delay. The purpose is to resolve as soon as possible the cases where a criminal offence was allegedly committed by a young offender.

68. At his or her request, the suspect is assigned a public defender whose fees are paid from public funds, irrespective of the financial situation of the suspect, whenever he or she has been arrested or imprisoned or charged with a crime which carries a minimum sentence of four months' imprisonment. The court assigns a public defender ex officio to an accused who is unable to manage his or her defence or who is under 18, except when it is obvious that the accused does not need a defender or this is obvious for some other special reason.

69. It is intended that the new Act specify more clearly the situations where a defendant in a criminal case needs the assistance of a defender. Irrespective of his or her financial situation, a suspect should have a defender whenever he or she is otherwise incapable of asserting his or her rights adequately. The new Act will supplement the provisions, already contained in the Cost-free Proceedings Act and the Pre-trial Investigation Act, on legal aid to persons suspected or accused in criminal cases.

70. In order for the court to ensure that the requirements for a centralized hearing of a criminal case are fulfilled, the public prosecutor ordinarily brings the charges by submitting to the court an application in writing for a summons and other related documents. It is for the court to summon the parties to appear before the court and to make other necessary preparations for the hearing. The summons issued to the accused will be more detailed than the previous one, which will help the accused to prepare his or her defence in advance.

71. The main hearing has to be held within two weeks from the beginning of lis pendens in cases where the accused is under 18 and accused with an offence which carries a sentence of imprisonment that exceeds six months, where the accused is imprisoned or has been issued a travel ban, or where the accused is suspended from office.

72. The main hearing of a criminal case is centralized, immediate and oral. The case is heard without postponement, the judges must be the same throughout the hearing, and only the matters raised orally in the main hearing may be considered in the resolution of the case. If, exceptionally, the hearing has to be postponed, it must be resumed as soon as possible and no later than 14 days from the original date of hearing in cases where the accused is under 18 or charged with an offence which carries a sentence of imprisonment exceeding six months, or where he or she is imprisoned or has been issued a travel ban, or where he or she is suspended from office. The main hearing should be conducted in such a manner as to permit ruling after one session.

73. The Bill contains more specific provisions on the compensation of legal expenses in a criminal case. The accused will have a right to compensation of his or her legal expenses from the State if, in a case where the charges were raised by the public prosecutor, the charges or any other claim leading to sanctions under criminal law are dropped or not examined by the court or where the indictment is dismissed. A person who without foundation is suspected of a crime will have the right to compensation of expenses resulting from pre-trial investigation.

74. In legal practice in Finland, article 14 of the Covenant is often invoked, especially in criminal cases. The Supreme Court has found violations of article 14 in cases, for example, where the accused was not given an opportunity to have examined the witnesses summoned to testify against him (KKO:1991:84). In one case (KKO:1992:73) the Supreme Court ruled that the accused could not be sentenced to a punishment for aggravated assault and battery because the accused did not have detailed knowledge of the content of the indictment, the reason being that his attention had not been drawn to the possibility that the indictment might be for aggravated assault and battery.

75. The Cost-free Proceedings Act (87/73) was amended on 30 December 1992 (1668/92) to the effect that a person who has been granted cost-free proceedings may not be assigned counsel whose expenses are paid by the State in simple criminal cases where, in the general practice of imposing punishments, no stricter punishment is to be expected than a fine. The same applies to cases where, considering the punishment to be expected and the well-established facts of the case, the legal protection of the accused does not require that he or she be assigned counsel.

Article 15

76. Although the Finnish criminal justice system is based on the idea that it is only acts punishable under law that are crimes and that an act may be punished only with a penalty stipulated by law, these rules are not explicitly contained in any Act of Parliament. In contrast, the principle that the act which provides for a more lenient punishment must be observed is expressed in article 3 of the Implementation Decree relating to the Penal Code (Act 770/90).

77. The general amendment of the fundamental rights provisions (969/1995) adds a new article, 6a, to the Constitution Act:

> "No one shall be held guilty of a criminal offence or sentenced to a punishment for an act which was not punishable under an Act of Parliament at the moment of commission. No greater punishment shall be imposed for an offence than was prescribed by an Act of Parliament at the moment of commission."

Article 17

78. An Act which entered into force on 1 June 1994 (316/94) introduced sanctions for rape in marriage.

79. As part of the comprehensive reform of the Penal Code, a proposal for a provision on the right to freedom of worship has been prepared by a working group at the Ministry of Justice. The various interested parties and experts who were approached for comment have already submitted their opinions on the proposal, but no measures have been taken so far to prepare a government bill. Another law reform concerns the provisions in the Penal Code on the right to privacy. A proposal by the working group at the Ministry of Justice was finalized in the spring of 1994, and opinions have been requested. Steps were taken at the end of 1994 to produce a government bill.

80. The amendment of the provisions on fundamental rights in the Constitution Act (969/1995) has replaced the former provisions on the inviolability of the home (art. 11) and the secrecy of postal, telegraph and telephone communications (art. 12) by a new article (8) which now also would protect private life:

> "Everyone's private life, honour and home shall be secured. Protection of personal data shall be prescribed and specified by an Act of Parliament.
>
> "The secrecy of postal, telegraph and telephone communications shall be inviolable.
>
> "Measures which are necessary to secure fundamental rights or to investigate crime and which extend to the sphere of the home may be prescribed by an Act of Parliament. Necessary restrictions may, in addition, be provided by an Act of Parliament on the secrecy of communications in the investigation of criminal offences which endanger the security of society or domiciliary peace, in judicial proceedings, in security checks, and during deprivation of liberty."

81. Article 18 of the Aliens Act states that a residence permit may be issued to an alien whose close relative resides in Finland or who is of Finnish descent or who has other ties to Finland. According to article 20, a residence permit may be issued to an alien who prior to entering Finland lived with his or her spouse residing in Finland or cohabited without marriage with a person residing in Finland.

Article 18

82. Article 61 of the Parliament Act has been repealed. The article excluded other Members of Parliament than those of the Evangelic-Lutheran denomination from debate on bills which concerned the Church Code of the Evangelic-Lutheran Church or other matters relating to that Church.

83. The Government Bill (309/1993 vp) on amending the provisions on fundamental rights proposes that the current article 8 on the freedom of religion be replaced by the following provision (art. 9):

> "Everyone shall have the right to freedom of religion and conscience. The right to freedom of religion and conscience shall include the right to profess and to practise a religion, the right to express a conviction, and the right to belong or not to belong to a religious community. No one shall be obliged to participate in religious practice against his or her conscience."

84. It is also proposed that a provision be added to article 75 of the Constitution Act relating to the obligation to national defence stating that the right to be exempted from military national defence on the basis of conviction be enacted by Parliament. Another proposal for inclusion in the Constitution Act (art. 5 (2)) is for the prohibition against discrimination on the basis of religion and conviction.

85. Article 1 of the Non-military Service Act states that a conscript who affirms that he is, for serious reasons of conscience based on religious belief or moral conviction, unable to perform service required by the Conscription Act (452/50) shall be exempted from service in time of peace and ordered to perform non-military service. For those applying for unarmed service a similar provision exists in article 36a of the Conscription Act (1260/1992).

86. The length of non-military service is 395 days. This also applies to men who sought to perform non-military service between 1987 and 1991 when the length of service was 480 days. Non-military service is longer than military service because of the differences between the two forms of service in the overall strenuousness and because there is no service for those who have completed non-military service to correspond to reservist military manoeuvres to which conscripts are liable. The difference in length is thus based on the concept of equality.

87. Article 17 of the Act prescribes that service shall be organized in such a manner that the duties do not conflict with the belief of the person performing non-military service. Non-military service consists of work which benefits society. There are nearly 900 places all over Finland where

non-military service may be performed: about half of them are in the social welfare and health care sectors and about a fourth in the sectors of education and culture. Some men performing non-military service are charged with duties in the Lutheran Church while others take up tasks relating to environmental protection or rescue services.

88. A person may apply for non-military service even after completing his military service. Instead of reservist military manoeuvres he is called to undergo supplementary service.

89. During the so-called Interim Act which was in force from 1987 to 1991 some 800 applications for non-military service were filed each year. During the new Act the number has reached 2,000.

90. A special Act (648/85) continues to be in force to exempt Jehovah's Witnesses from military service.

91. As regards church tax payable by corporations, the Supreme Administrative Court ruled on 30 December 1994 that the right to freedom of religion guaranteed to Finnish citizens by article 8 was applicable only to natural persons; therefore the extension to natural persons of the liability to pay church tax could not be regarded as a violation of the principle of the freedom of religion. The Court did not find any direct or indirect violation of the right to the freedom of thought, conscience and religion referred to in article 18 (1) of the Covenant in the case of corporations liable to pay church tax the partners of which were not members of the Evangelic-Lutheran Church.

Article 19

92. According to the amendment of the fundamental rights provisions of the Constitution Act (969/1995) the provision on the freedom of expression be revised as follows (art. 10):

> "Everyone shall have the right to freedom of expression. The right to freedom of expression shall include the right to impart, publish and receive information, opinions and other communications without prior interference by anyone. More specific provisions on the exercise of the right to freedom of expression shall be given by an Act of Parliament. Restrictions concerning pictorial programmes, necessary to protect children, may be prescribed by an Act of Parliament.
>
> "Documents and other records in the possession of the authorities shall be public, unless public access to them has been restricted separately by an Act of Parliament for compelling reasons. Everyone shall have the right to information in public documents and records."

93. The Freedom of the Press Act (1/19) has been amended twice to extend the right to publish printed matter to apply to aliens. One amendment (1333/89) extended the right to publish printed matter from Finnish citizens to aliens who have residence in Finland. The other amendment (Act 308/93) eliminated the residence requirement. This means that everyone now has the right to publish printed matter without prior interference by the authorities.

94. The right to run a printing press has also been extended to aliens who are legally competent and have residence in Finland and to the branch offices owned by foreign businessmen and registered in Finland. The requirement of residence in Finland may be waived by an international treaty. The requirement of Finnish citizenship has been eliminated also for editors-in-chief of printed periodicals.

Article 20

95. The Government Bill (94/1993 vp) on the amendments of the Penal Code and a number of other Acts constituting the second phase of the comprehensive reform of the penal legislation proposes penalization of propaganda for war (chap. 12, art. 2). According to the Bill, a number of acts are punishable during a military or international political crisis which threatens Finland or is imminent. Such acts are: (a) incitement to aggression; (b) public dissemination of statements designed to influence public opinion to turn in favour of acts of aggression; (c) dissemination of false information about Finland's defence and military policy; or (d) an unlawful act of violence towards a foreign State in such a manner as to increase the risk of Finland becoming a target of military action.

96. Literally speaking, the criminalization of propaganda for war does not entail banning all war propaganda. However, it criminalizes any propaganda for war which increases the risk of war during a crisis or when a crisis is imminent, in other words, the most dangerous forms of war propaganda.

Article 21

97. The amendment of the provisions on fundamental rights of the Counstitution Act (969/1995) has replaced the former provision on the right to freedom of assembly with the following provision (art. 10a (1)):

> "Everyone shall have the right to hold meetings and demonstrations without obtaining permission and to attend them."

98. In March 1994 the Human Rights Committee resolved an application against Finland (Kivenmaa case, 412/1990) relating to the alleged violation of articles 19 and 21:

> "The Committee finds that a requirement to notify the police of an intended demonstration in a public place six hours before its commencement may be compatible with the permitted limitations laid down in article 21 of the Covenant. In the circumstances of this specific case, it is evident from the information provided by the parties that the gathering of several individuals at the site of the welcoming ceremonies for a foreign head of State on an official visit, publicly announced in advance by the State party authorities, cannot be regarded as a demonstration. In so far as the State party contends that displaying a banner turns their presence into a demonstration, the Committee notes that any restrictions upon the right to assembly must fall within the limitation provisions of article 21. A requirement to pre-notify a demonstration would normally be for reasons of national security or public safety, public order, the protection of public health or morals

> or the protection of the rights and freedoms of others. Consequently, the application of Finnish legislation on demonstrations to such a gathering cannot be considered as an application of a restriction permitted by article 21 of the Covenant." (A/49/40, vol. II, annex IX.N, para. 9.2)

The petitioner has submitted to the Supreme Court an application to quash the decision in the case.

99. The Act on public meetings has been amended by Act 1332/89 to eliminate the restrictions on aliens' right of assembly. Now everyone has a right to assemble in public meetings to discuss public affairs or for any other lawful purpose. Every alien who is legally competent and has residence in Finland as well as every association which is registered in Finland has the right to organize a public meeting.

100. An overall reform of the legislation on the right of assembly and the right to demonstrate is under way at the Ministry of Justice. It is intended that a government bill be submitted to Parliament in 1995.

101. The Government Bill (94/1993 vp) on the amendments of the Penal Code and a number of other Acts constituting the second phase of the comprehensive reform of the penal legislation contain new penal provisions for the violation of political freedoms (Penal Code, chap. 14, art. 5) and for the prevention of public meetings (chap. 14, art. 6). The former provision applies to a person who, by using or threatening to use violence, constitutes a serious risk to the welfare of another person, prevents the other (a) from expressing his or her opinion at a public meeting, at any other event, in the media or publicly in any other manner; or (b) from participating in a meeting, in a procession or in any other event relating to public affairs. Similarly, anyone who in the same way makes another person express his or her opinion or participate in a meeting is liable for punishment. The punishment in such cases is a fine or a maximum of two years' imprisonment. A person is punished for preventing a meeting if he or she unlawfully prevents the organization of a meeting, procession or event relating to public affairs by using or threatening to use violence. The scale of punishment is the same as under the former penal provision.

Article 22

102. The amendment of the provisions on fundamental rights of the Constitution Act (969/1995) amends the provision on the right to freedom of association as follows (art. 10a (2)):

> "Everyone shall have the right to freedom of association. The right to freedom of association shall include the right to found an association without permission, to belong or not to belong to an association and to participate in the activities of an association. Similarly secured shall be the right to form and join trade unions and the right to organize in order to attend to other interests.
>
> "More specific provisions on the exercise of the rights of freedom of association and assembly shall be given by an Act of Parliament."

103. The Association Act has been revised to eliminate restrictions on aliens' right to freedom of association (Act 1331/89). Members of an association may be private individuals, corporations or foundations. If the main objective of an association is to influence State affairs, members can be Finnish citizens, aliens residing in Finland and associations whose membership consists of such persons only. The Chairperson of the association and at least half of the members of the board must have residence in Finland, but exceptions may be allowed by the Ministry of Justice. If the main objective of the association is to influence State affairs, only persons residing in Finland may be members of the board.

104. The Government Bill (94/1993 vp) on the amendments of the Penal Code and a number of other Acts constituting the second phase of the comprehensive reform of the penal legislation contains new penal provisions for the violation of political freedoms (Penal Code chap. 14, art. 5). The provision prescribes a fine or a maximum sentence of two years' imprisonment in cases where a person, by using or threatening to use violence which constitutes a serious risk to the welfare of another person, prevents that person from founding or joining or belonging to or being active in an association devoted to public affairs. Similarly, a person is punished for forcing another person to join such an organization or to belong to it.

105. The Bill also proposes a specific provision on the violation of employees' right to freedom to organize (Penal Code 47, art. 5). Punishable under the proposed provision are employers, their representatives or employees who (a) prevent employees from founding a permissible professional or political association or from exercising their right to join or belong to or be active in such an organization, or (b) who prevent employees or their trade union from appointing or choosing a shop steward, officer responsible for monitoring health and safety at work or staff representative. Punishment for the violation of employees' freedom to organize is also imposed on a person who forces an employee to belong to a professional or political association.

Article 23

106. Reference is made to the third periodic report (CCPR/C/58/Add.5).

107. Finland has ratified the Convention on the Civil Aspects of International Child Abduction concluded at The Hague on 25 October 1980 and the European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children (ETS 105) concluded in Luxembourg on 20 May 1980. Both Conventions entered into force for Finland on 1 August 1994. The conventions help to protect the relationship between the child and the custodian especially in situations where the family breaks up. Amendments to Acts relating to child custody and the right of access entered into force on the same day as the Conventions.

Article 24

108. Reference is made to the third periodic report (CCPR/C/58/Add.5). As regards acquisition of citizenship, reference is made to the second periodic report.

109. The Government Bill on amending the provisions on fundamental rights proposes that in addition to provisions on equality, on the prohibition against discrimination and on the equality of the sexes, a separate provision be added to article 5 stipulating that children must be treated equally and as individuals (art. 5 (3)).

110. The Convention on the Rights of the Child concluded in 1989 entered into force for Finland in 1991. Finland submitted its initial report under the Convention in December 1994.

Article 25

111. An Act adopted in late 1991 (1717/91) extended the right to vote in local elections and local referendums to aliens permanently resident in Finland. The right to vote in national elections and referendums will continue to apply only to Finnish citizens. The amendment of the provisions on fundamental rights of the Constitution Act (969/1995) adds the right to vote in local elections and referendums to the Constitution Act (art. 11 (2)). The new provision specifies the principle enunciated in article 51 (2) of the Constitution Act that the administration of municipalities shall be based on self-government of the citizens.

112. In 1989 an amendment (724/89) was introduced to the Constitution Act to eliminate a number of constitutional restrictions on the right of aliens to enter public service. Following the amendment, an alien may be appointed to any public office excluding those specifically reserved for Finnish citizens.

Article 26

113. Reference is made to the answer given with respect to article 2, which treats the provision on prohibition against discrimination included in the Government Bill on amending the provisions on fundamental rights, as well as the provision on punishability of discrimination included in the comprehensive reform of the penal legislation. The Penal Code would separately prohibit discrimination related to work (chap. 47, art. 3). In this respect, the proposal would mean the transfer of the penal provisions on discrimination, which were previously contained in legislation on labour and civil servants, to the general Penal Code.

Article 27

114. The minorities living in Finland are Sámis, Romanies and persons who migrated from Russia.

115. The Sámi are an indigenous people who constitute an ethnic minority in Finland, Sweden, Norway and Russia. In Finland there are about 6,000 Sámi of whom 3,900 live in the municipalities of Inari, Utsjoki and Enontekiö as well as in the northern part of the municipality of Sodankylä. This area constitutes the Sámi homeland in Finland.

116. Since 1973, the Sámi Delegation (Sámi Parliament) has served as the representative body of the Sámi in Finland. Its task is to assert the rights and protect the interests of the Sámi by submitting initiatives and proposals

to officials and by issuing statements. The Sámi choose the 20 members of the Delegation in elections held among them every four years. So far the powers of this body have been increased only by a few administrative measures.

117. In November 1991, an amendment to the Parliament Act came into force. This event was historical for the Sámi, because it was the first time the Sámi were mentioned in the Finnish Constitution. According to the amendment, the Finnish Parliament shall hear representatives of the Sámi before deciding on matters affecting them closely. In practice, it has always been the Sámi Delegation which has been heard by the committees of Parliament in these matters.

118. The amendments of the Finnish Constitution with regard to the Sámi have continued further. According to the amendment of the provisions on fundamental rights of the Constitution (969/1995) the Sámi as an indigenous people and the Romanies and other groups have the right to maintain and develop their own language and culture. The new provision (14.3 §) reads:

> "The Sámis as an indigenous people and Romanies and other groups shall have the right to maintain and develop their own languages and cultures. The right of the Sámis to use the Sámi language before authorities shall be prescribed by an Act of Parliament. The rights of those who use sign language and of those who are in need of interpretation or translation because of disability shall be secured by an Act of Parliament."

119. The law proposals included in the Bill have been passed by Parliament (969/1995) and have entered into force. The Government Bill presented at the end of 1994 contains another proposal for the amendment of the Constitution which concerns the legal status and the Sámi administration. This amendment (973/1995), which is based on the cultural autonomy of the Sámi people, was approved by Parliament and will enter into force on 1 January 1996.

120. In practice, the most important legislative amendment for the Sámi in Finland has certainly been the entry into force of the Act on the Use of the Sámi Language Before the Authorities at the beginning of 1992. If a civil servant is required to speak the Sámi language, he shall, in the Sámi homeland upon the request of a Sámi party, use this language. Otherwise, translations or interpretation shall be used. The right of a Sámi party to get a translation of a decision in the Sámi language has also been guaranteed. The Act further requires that public notices and other similar documents issued to the public shall, in the Sámi homeland, be issued also in the Sámi language. Those acts or decrees or decisions of the Council of State or the ministries published in the Finnish Law Gazette which are especially related to the Sámi shall be published also in the Sámi language. A separate office under the Sámi Delegation has been set up for translations and it also helps the authorities when they need Sámi interpreters.

121. The question of the rights of the Sámi to the lands and waters which they have traditionally occupied and used for their means of livelihood is not yet solved. The Advisory Board for Sámi Affairs, which is a joint body of both the authorities and the Sámi Delegation, prepared in 1990 a proposal for a Sámi Act. According to this proposal present State forests inside the Sámi

homeland would be turned into Sámi commons with each Lapp village having ownership rights. In May 1993 the Ministry of the Interior decided that the Sámi Delegation should continue the preparation of the Sámi Act.

122. Finland has not yet ratified ILO Convention No. 169 concerning indigenous and tribal peoples in independent States, because it is not clear whether the Finnish legislation on the land ownership rights of the Sámi is in harmony with the provisions of the Convention. In its resolution adopted at the beginning of 1995, Parliament demanded that the Government make as soon as possible an assessment examining how the obstacles to the ratification of the ILO Convention could be removed and what kind of practical consequences this would have. Parliament also demanded that the Constitutional Law Committee of Parliament immediately receive the assessment in order to deal with it.

123. The Romani population is estimated at some 6,000. The main duty of the Advisory Board for Romani Affairs operating at the Ministry of Social Affairs and Health is to improve the living conditions for Romanies. There have been very few cases where Romanies have brought legal action for discrimination; these have mostly related to entry into restaurants.

124. Since 1992, a unit for the development of Romani education and culture has operated in the National Board of General Education. It has the duty to improve education for the Romani population at the national level and carry out practical measures to that end, to promote the Romani language and culture, and to inform. In March 1995, the unit had two employees.

125. A small Jewish community of some 1,400 people and a Tartar population of 900 people, originally migrants from the Kazan area, have resided in Finland for a long time. Also, a small Russian-speaking minority has traditionally resided in Finland. The number of Russian speakers has increased considerably, to some 20,000 people, as a result of immigration in the past few years.

126. Finland ratified the European Charter for Regional and Minority Languages in October 1994. At the time of ratification Finland declared that it regards the Sámi language as a regional minority language, the Swedish language as a less spoken official language, and the Romani language as a non-regional minority language. Finland also declared that it undertakes to apply, mutatis mutandis, the principles enumerated in article 7 (1 to 4) of the Charter to the Romani and other non-territorial languages in Finland.